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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF HAWAII

10 JENNIFER ANN MCTIGUE,) Case No. CV 18-275-CBM (PJW)
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12) Petitioner,)
13) v.) REPORT AND RECOMMENDATION OF
14) UNITED STATES MAGISTRATE JUDGE
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16) H. KOBAYASHI, Warden, et al.,)
17)
18) Respondents.)
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16 This Report and Recommendation is submitted to the Hon. Consuelo
17 B. Marshall, United States District Judge, pursuant to 28 U.S.C. § 636
18 and Local Rule 72.6 of the United States District Court for the
19 District of Hawaii. For the reasons discussed below, it is
20 recommended that the Petition be denied and the action be dismissed
21 with prejudice.

22 I.

23 SUMMARY OF FACTS AND PROCEEDINGS

24 Petitioner is a federal prisoner who is currently housed at the
25 T.J. Mahoney Hale halfway house in Honolulu, Hawaii. (Opposition to
26 Petition at 2.) Her anticipated release date is January 16, 2019.
27 (Petition at 13.)
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1 In July 2015, Petitioner pled guilty to conspiracy to commit wire
2 fraud, mail fraud, and money laundering, and was sentenced to 60
3 months in prison. (*United States v. McTigue, et al.*, CR 14-0010-CBM
4 (Doc. Nos. 191, 192, 235, 236).) In February 2018, she was
5 transferred from FCI Tallahassee to T.J. Mahoney to complete the final
6 phase of the BOP residential drug abuse program ("RDAP").¹ Petitioner
7 alleges that she was treated more severely than other residents at
8 T.J. Mahoney because one of the victims of her underlying crime was a
9 U.S. Probation officer. (Petition at 7.) Nevertheless, in May 2018,
10 Petitioner was transferred to home confinement, under the auspices of
11 the RDAP program. (Petition at 8.) On June 12, 2018, she was placed
12 back in the halfway house after employees became concerned that she
13 was drinking excessive amounts of water to dilute her urine samples,
14 which could mask drug use. (Petition at 8-9.) Petitioner alleges
15 that, despite being informally assured that she would be returned to
16 home confinement, on June 15, 2018, she was placed in prison in
17 Honolulu. (Petition at 10-11.)

18 On July 17, 2018, she filed the instant Petition, pursuant to 28
19 U.S.C. § 2241, complaining:

- 20 1. Her continued detention at FDC Honolulu violates her right
21 to due process and equal protection.
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26 ¹ "RDAP is an intensive drug treatment program for federal
27 inmates with documented substance abuse problems," which, if completed
28 successfully, can result in up to a one-year reduction in a prisoner's
sentence. *Reeb v. Thomas*, 636 F.3d 1224, 1225 (9th Cir. 2011).

1 can no longer grant her the relief she seeks. Thus, her request for
2 habeas corpus relief is moot. See *Abbott v. Federal Bureau of*
3 *Prisons*, 771 F.3d 512, 513 (9th Cir. 2014) (holding claims regarding
4 legality of RDAP eligibility rule rendered moot by BOP's decision to
5 re-admit prisoner to RDAP program); *Kittel v. Thomas*, 620 F.3d 949,
6 951 (9th Cir. 2010) (holding § 2241 petition challenging BOP denial of
7 early release pursuant to RDAP was mooted by petitioner's subsequent
8 transfer to halfway house, even though petitioner had suffered actual
9 injury by BOP's initial erroneous decision).

10 Petitioner acknowledges that she has been returned to the halfway
11 house, but complains that she has "not been returned to her original
12 status as a participant in the home-confinement program." (Brief in
13 Support of Petition at 1.) Respondent points out, however, that her
14 brief stay in home confinement was intended to be temporary until
15 space became available in the halfway house. (Opposition at 4.) In
16 any event, both the halfway house and home confinement are components
17 of the community-based program requirement of RDAP, which Petitioner
18 has not challenged here. Because Petitioner is seeking only release
19 from federal prison and she has been released, there is no further
20 relief that the Court can provide.²

21 Further, even were the Court to reach her other claims, it would
22 conclude that it does not have jurisdiction to review them.
23 Petitioner contends that the decisions by BOP staff were arbitrary and
24 capricious. She argues that staff failed to comply with BOP's own
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26 ² The other injunctive and monetary relief that Petitioner seeks
27 is not available in federal habeas. See *Douglas v. Jacquez*, 626 F.3d
28 501, 504 (9th Cir. 2010) ("[A] habeas court has the power to release a
prisoner, but has no other power.") (citations omitted).

1 program statements in revoking her RDAP status by failing to maintain
2 incident reports and by failing to give her appropriate notice.
3 (Petition at 14-20; Brief in Support of Petition at 2-9.) Generally
4 speaking, however, the Court lacks jurisdiction to consider BOP's
5 determinations under 18 U.S.C. § 3621. *Reeb v. Thomas*, 636 F.3d 1224,
6 1228 (9th Cir. 2011). Indeed, the BOP enjoys absolute discretion in
7 determining which prisoners are eligible to participate, or no longer
8 participate, in RDAP:

9 [A]ny substantive decision by the BOP to admit a particular
10 prisoner into RDAP, or to grant or deny a sentence reduction for
11 completion of the program, is not reviewable by the district
12 court. The BOP's substantive decisions to remove particular
13 inmates from the RDAP program are likewise not subject to
14 judicial review.

15 *Id.* at 1227.

16 As for Petitioner's constitutional claims, they, too, are without
17 merit because she does not have a constitutional right to be released
18 from prison before the expiration of her sentence. *Martin v.*
19 *Saunders*, 2010 WL 5563579, at *4 (C.D. Cal. Nov. 9, 2010) (citing
20 *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1
21 (1979)). Thus, "the possibility of early release upon completion of
22 RDAP . . . does not create a protected liberty interest" that is
23 subject to the federal Due Process Clause. *Id.*, citing *Jacks v.*
24 *Crabtree*, 114 F.3d 983, 986 n.4 (9th Cir. 1997). Finally,
25 Petitioner's argument that the BOP violated its own program statements
26 in removing her from RDAP does not state a federal claim. *Reeb*, 636
27 F.3d at 1227 ("[N]oncompliance with a BOP program statement is not a
28 violation of federal law.").

1 III.

2 RECOMMENDATION

3 For all of these reasons, IT IS RECOMMENDED that the Court issue
4 an Order (1) accepting this Report and Recommendation and
5 (2) directing that the Petition be denied and the action dismissed
6 with prejudice.

7 DATED: January 7, 2019.

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10 PATRICK J. WALSH
11 UNITED STATES MAGISTRATE JUDGE
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